Hu Chang Pee (also known as Hii Chang Pee) v Tan Sri Datuk Paduka (Dr) Ting Pek Khiing

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q-02–440 OF 1999
RAUS SHARIF, SULONG MATJERAIE AND AHMAD MAAROP JJCA
22 JANUARY 2010

Civil Procedure — Jurisdiction — Court of Appeal — Appeal from High Court of Sarawak to Court of Appeal sitting in Putrajaya — Appearance of counsel from Sarawak in Court of Appeal at Putrajaya — Whether appeal proper — Whether Court of Appeal had jurisdiction to hear

The High Court at Miri, Sarawak struck out the appellant's writ action against the respondent. The appellant appealed to the Court of Appeal and the Court of Appeal sitting at Putrajaya allowed the appeal and restored the suit for trial. The trial proceeded and judgment was entered against the respondent. The respondent subsequently appealed against the decision. While the appeal was still pending the respondent filed a notice of motion in encl 22(a) to set aside or vacate the order of the Court of Appeal on the ground that the court sitting in Putrajaya had no jurisdiction to hear any appeal from the High Court of Sarawak and/or when an advocate of the High Court of Sarawak appeared in the sitting in Putrajaya.

Held, dismissing the application with costs:

(1) The Federal Court in *Datuk Hj Mohammad Tufail bin Mahmud & Ors v Dato Ting Check Sii* [2009] 4 MLJ 165 ('*Mohammad Tufail*') had established beyond reasonable doubt that the appearance of the advocates from Sarawak in the Court of Appeal sitting in Putrajaya and the hearing of such an appeal was proper and in accordance with the law. It was clear from the case that an advocate from Sarawak has the right of audience in the Court of Appeal sitting in Putrajaya, when the matter under appeal emanated from the High Court of Sabah and Sarawak (see para 10); *Datuk Hj Mohammad Tufail bin Mahmud & Ors v Dato Ting Check Sii* [2009] 4 MLJ 165 followed.

(2) The matter in the present case emanated from the High Court Miri, Sarawak and thus the appearance of both counsel from Sarawak in the Court of Appeal at Putrajaya did not render the order of the court null and void. The court therefore had no reason to depart from the decision of *Mohammad Tufail* (see para 12).

(3) Further, the provisions of ss 39 and 75 of the Courts of Judicature Act 1964 clearly empowers the President of the Court of Appeal or the Chief Justice to direct any appeal in the Court of Appeal or Federal Court respectively, be heard in any place in Malaysia. The court therefore had the jurisdiction to hear the matter emanating from Sarawak (see paras 14–15).

[Bahasa Malaysia summary

Mahkamah Tinggi Miri, Sarawak membatalkan writ tindakan perayu terhadap responden. Perayu merayu ke Mahkamah Rayuan dan Mahkamah Rayuan yang bersidang di Putrajaya membenarkan rayuan tersebut dan mengembalikan guaman itu untuk perbicaraan. Perbicaraan diteruskan dan penghakiman dimasukkan terhadap responden. Responden kemudiannya merayu terhadap keputusan tersebut. Sementara rayuan masih menunggu pendengaran, responden memfailkan notis usul dalam lampiran 22(a) untuk mengetepikan atau membatalkan perintah Mahkamah Rayuan atas alasan bahawa mahkamah yang bersidang di Putrajaya tiada bidang kuasa mendengar apa-apa rayuan dari Mahkamah Tinggi Sarawak dan/atau apabila peguam bela Mahkamah Tinggi Sarawak hadir dalam persidangan di Putrajaya.

Diputuskan, menolak permohonan dengan kos:

(1) Mahkamah Persekutuan dalam kes *Datuk Hj Mohammad Tufail bin Mahmud & Ors v Dato Ting Check Sii* [2009] 4 MLJ 165 ('*Mohammad Tufail*') telah menetapkan melampaui keraguan yang munasabah bahawa kehadiran peguam bela-peguam bela dari Sarawak di Mahkamah Rayuan yang bersidang di Putrajaya dan pendengaran sesuatu rayuan adalah teratur dan menurut undang-undang. Adalah jelas daripada kes tersebut bahawa seseorang peguam bela dari Sarawak berhak hadir di Mahkamah Rayuan yang bersidang di Putrajaya, apabila perkara yang dirayukan itu bermula dari Mahkamah Tinggi Sabah dan Sarawak (lihat perenggan 10); *Datuk Hj Mohammad Tufail bin Mahmud & Ors v Dato Ting Check Sii* [2009]4 MLJ 165 diikut.

(2) Perkara dalam kes ini bermula di Mahkamah Tinggi Miri, Sarawak dan oleh itu, kehadiran kedua-dua peguam dari Sarawak di Mahkamah Rayuan Putrajaya tidak menjadikan perintah mahkamah tersebut batal dan tidak sah. Oleh itu mahkamah tiada sebab untuk menyimpang daripada keputusan *Mohammad Tufail* (lihat perenggan 12).

(3) Selanjutnya, peruntukan-peruntukan ss 39 dan 75 Akta Mahkamah Kehakiman 1964 jelas memberi kuasa kepada Presiden Mahkamah Rayuan atau Ketua Hakim Negara untuk mengarahkan mana-mana rayuan di Mahkamah Rayuan atau Mahkamah Persekutuan, didengar

di mana-mana di Malaysia. Maka, mahkamah mempunyai bidang kuasa untuk mendengar perkara yang bermula dari Sarawak (lihat perenggan 14–15).]

Notes

For cases on Court of Appeal, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4381–4383.

Cases referred to

Abdul Karim bin Abdul Ghani v Legislative Assembly of Sabah [1988] 1 MLJ 171, SC (not folld)
Dalip Bhagwan Singh v PP [1998] 1 MLJ 1, FC (refd)
Datuk Hj Mohammad Tufail bin Mahmud & Ors v Dato' Ting Check Sii [2009] 4 MLJ 165; [2009] 4 CLJ 449, FC (folld)
Malaysian Bar v Mutang Tagal [1985] 1 MLJ 231, FC (not folld)

Legislation referred to

Courts of Judicature Act 1964 ss 39, 75

Muhammad Shafee Abdullah (Victor Wong Lit Fah and Bong Ah Loi with him) (Suhaili Bong & Co) for the appellant.
Lim Heng Choo (Lee Heng Cheong with him) (Lim & Lim) for the respondent.

Raus Sharif JCA (delivering judgment of the court):

[1] By way of notice of motion in encl 22(a) the respondent is moving this court to set aside or vacate the order of this court dated 21 June 2004. The reason for such prayer was because it was the respondent's submission that this court sitting in Putrajaya had no jurisdiction to hear any appeal from the High Court of Sarawak and/or when an advocate of the High Court of Sarawak appeared in the sitting in Putrajaya. This lack of jurisdiction rendered the order of this court dated 21 June 2004 null and void.

[2] We heard encl 22(a) at our sitting in Kuching, Sarawak on 5 October 2009. Having heard the submissions of the parties, we adjourned the matter for our consideration and decision. We now give our decision and the reasons for the same.

[3] The events leading to the filling of encl 22(a) are as follows. The appellant had filed a writ action against the respondent to claim the sum of RM8.5m with interest thereon. On 7 May 1999, the High Court at Miri, Sarawak ordered that the action be struck out and dismissed with costs.

[4] Aggrieved, the appellant filed an appeal to this court. On 21 June 2004, this court sitting at Putrajaya allowed the appeal and restored the High Court suit for trial. The hearing of the appeal at Putrajaya was attended by advocates of Sarawak from the both sides.

[5] Consequent thereto, the High Court proceeded with the trial. On 3 December 2007, the High Court at Miri, Sarawak entered judgment against the respondent and ordered the respondent to pay the appellant the sum of RM8.5m with interest thereon and costs.

[6] The respondent had, on the 4 December 2007 appealed to the Court of Appeal against the said decision. While the appeal was still pending, the respondent on 29 April 2008 filed this notice of motion as in encl 22(a) seeking that the order of this court made on 21 June 2004 be set aside and/or vacated.

[7] The main ground of this application is that this court sitting at Putrajaya on 21 June 2004 hearing an appeal from the High Court of Sabah and Sarawak had no jurisdiction to hear such appeal and the advocates for Sarawak had no right to appear at Putrajaya to argue the appeal from Sarawak.

[8] Dato' Muhamad Shafee Abdullah, learned counsel for the appellant, at the outset acknowledged that the recent Federal Court case of *Datuk Hj Mohammad Tufail bin Mahmud & Ors v Dato' Ting Check Sii* [2009] 4 MLJ 165; [2009] 4 CLJ 449 ('*Mohammad Tufail*'), had ruled on this matter. Nevertheless he submitted that the Federal Court decision was made without a thorough consideration of whether, irrespective of the question of the legal competency of counsel appearing before the Court of Appeal sitting in Putrajaya, the Court of Appeal has jurisdiction/power to sit in Putrajaya over matters emanating from Sarawak. It was also contended that the decision was made per incuriam of the long established decisions of the Supreme Court and the Federal Court in various cases; and that it failed to adhere to the principle that with the clear wording of a statue, the golden rule and the purposive approach to interpretation had no role to play.

[9] Thus, Dato' Muhamad Shafee urged us not to follow the decision of the Federal Court in *Mohammad Tufail*. Instead he asked us to follow the decision of the Supreme Court case of *Abdul Karim bin Abdul Ghani v Legislative Assembly of Sabah* [1988] 1 MLJ 171 ('*Abdul Karim*') and the Federal Court case of *Malaysian Bar v Mutang Tagal* [1985] 1 MLJ 231 ('*Mutang Tagal*').

[10] With utmost respect, we are of the view that the two cases referred to were not exactly on point. However, even if they were on point, the decision in *Mohammad Tufail* being the later decision of the Federal Court prevails over the earlier decision of *Abdul Karim* and *Mutang Tagal* (see *Dalip Bhagwan Singh v Public Prosecutor* [1998] 1 MLJ 1). More importantly, the decision of the Federal Court in *Mohammad Tufail* had established beyond doubt that the appearance of advocates from Sarawak in the Court of Appeal sitting in Putrajaya and the hearing of such an appeal was proper and in accordance with the law.

[11] In *Mohammad Tufail*, two questions were posed to the Federal Court:

(a) Whether an advocates and solicitors from Peninsular Malaysia is entitled to appear as counsel in an appeal to be heard in Putrajaya arising from a matter originating from the High Court in Sabah and Sarawak at Kuching.

(b) Whether an advocates from Sarawak is entitled to appear as counsel in an appeal to be heard (by the Court of Appeal) in Putrajaya arising from matter originating from the High Court in Sabah and Sarawak at Kuching.

[12] The Federal Court answered the first question in the negative and the second question in the affirmative. The effect of the answer to the second question is that, an advocate from Sarawak has the right of audience in the Court of Appeal sitting in Putrajaya, when the matter under appeal emanated from the High Court of Sabah and Sarawak. We have no reason to depart from the said decision. In the present case, the matter emanated from the High Court Miri, Sarawak. Thus, the appearance of both counsel from Sarawak in the Court of Appeal at Putrajaya did not render the order of this court dated 21 June 2004 null and void.

[13] On the issue that the Court of Appeal or for that matter the Federal Court cannot sit in West Malaysia over appeals involving matters arising from Sabah or Sarawak, our short answer is ss 39 and 75 of the Courts of Judicature Act 1964. Section 39 refers to the sittings of the Court of Appeal while s 75 refers to the sittings of the Federal Court.

[14] Under s 39, it is provided that the Court of Appeal shall sit on such dates and at such places as the President may from time to time appoint. And it also provided that the President may when it deems it expedient, direct that any appeal be heard at any time and in any place in Malaysia. Similar powers are given in s 75 of the Courts of Judicature Act 1964 to the Chief Justice with regard to the sittings of the Federal Court. The two sections clearly

empowers the President or the Chief Justice to direct any appeal in the Court of Appeal or Federal Court respectively, be heard in any place in Malaysia.

[15] Therefore, we see no reason why this court cannot sit in Putrajaya hearing over matters emanating from Sarawak since s 39 of the Courts of Judicature Act 1964 clearly provides that the President has the power to determine where and when any appeal may be heard.

[16] For the aforesaid reasons, the respondent's application in encl 22(a) must be dismissed with costs.

Application dismissed with costs.

Reported by M Sivabarathi